

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
**FIRST AMENDED CHARGE AGAINST
LABOR ORGANIZATION OR ITS AGENTS**

DO NOT WRITE IN THIS SPACE	
Case 06-CB-245925	Date Filed 06/04/2020

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT			
a. Name Chauffeurs, Teamsters & Helpers Local Union No. 175		b. Union Representative to contact (b) (6), (b) (7)(C)	
c. Address (Street, city, state, and ZIP code) 267 Staunton Avenue SW, South Charleston, WV 25303		d. Tel. No. (b) (6), (b) (7)(C)	e. Cell No.
		f. Fax. No. (b) (6), (b) (7)(C)	
		g. e-mail	
h. The above-named labor organization has engaged in and is engaging in unfair labor practices within the meaning of section 8(b), subsections (1) and (list subsections) 8(b)(1)(A), and 8(b)(2) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) See Attachment A.			
3. Name of Employer 5. 1539 Country Club Road Manor Operations, LLC d/b/a Tygart Center at Fairmont Campus, a Genesis HealthCare Facility		4a. Tel. No. 304-366-9100	b. Cell No.
		c. Fax No.	
		d. e-mail	
5. Location of plant involved (street, city, state and ZIP code) 1539 Country Club Road, Fairmont, West Virginia 26554		6. Employer representative to contact Melissa Millieron	
7. Type of establishment (factory, mine, wholesaler, etc.) Healthcare	8. Identify principal product or service Nursing and Rehabilitation	9. Number of workers employed 150	
10. Full name of party filing charge (b) (6), (b) (7)(C)			
11. Address of party filing charge (street, city, state and ZIP code) (b) (6), (b) (7)(C)		11a. Tel. No.	b. Cell No.
		c. Fax No.	
		d. e-mail	
12. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. /s/Alyssa K. Hazelwood (signature of representative or person making charge) c/o National Right to Work Legal Defense Foundation, Inc. 8001 Braddock Road, Suite 600 Address Springfield, VA 22160		Tel. No. (703) 321-8510 Cell No. Fax No. (703) 321-9319 e-mail akh@nrtw.org	
Alyssa K. Hazelwood, Staff Attorney (Print/type name and title or office, if any)		Date 6/3/20	

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Attachment A

Part I

1. At all material times, Charging Party (b) (6), (b) (7)(C) (“Charging Party”) was employed by Genesis HealthCare facility: 1539 Country Club Road Operations LLC d/b/a Tygart Center at Fairmont Campus (“Employer”) and is exclusively represented by Chauffeurs, Teamsters & Helpers Local Union 175 and its affiliates (“Union”).
2. Charging Party worked for Tygart Center previously, but left employment in approximately (b) (6), (b) (7)(C). During (b) (6), (b) (7)(C) previous employment, (b) (6), (b) (7)(C) signed a dues checkoff authorization (“checkoff”) with an anniversary date of November 1 (“November checkoff”).
3. Charging Party was re-hired by Tygart Center in (b) (6), (b) (7)(C).
4. At the time Charging Party was re-hired, (b) (6), (b) (7)(C) was told (b) (6), (b) (7)(C) had to be a member of the Union, so (b) (6), (b) (7)(C) signed a new membership application and a checkoff. This checkoff has an anniversary date of May 23 (“May checkoff”).
5. On or about February 4, 2019, Charging Party sent a letter to the Union resigning (b) (6), (b) (7)(C) membership and revoking (b) (6), (b) (7)(C) current checkoff.
6. Charging Party received a letter from the Union dated February 22, 2019, confirming receipt of (b) (6), (b) (7)(C) letter. In the letter, the Union did not accept Charging Party’s resignation and instead required (b) (6), (b) (7)(C) to “elect non-member status” through sending an additional objection.
7. The Union’s letter also rejected (b) (6), (b) (7)(C) checkoff revocation as untimely and provided an anniversary date of November 1, 2018, a window period of “at least 60 days before, but not more than 75 days before the periodic renewal date,” and a copy of the November checkoff. However, the letter did not state explicitly what window period the union believe was the proper time for Charging Party to revoke (b) (6), (b) (7)(C) checkoff(s).
8. Charging Party sent a second letter on or about March 14, 2019, which the Union received on or about March 18, 2019, reaffirming (b) (6), (b) (7)(C) resignation from the Union and revoking (b) (6), (b) (7)(C) most-current May checkoff within the window period prescribed therein.
9. The Union did not respond to this letter until after Charging Party filed (b) (6), (b) (7)(C) unfair labor practice charge. Until that time, the Union continued to accept dues deducted from Charging Party’s wages.
10. The Union violated Charging Party’s Section 7 right to resign from Union membership by rejecting (b) (6), (b) (7)(C) resignation and requiring (b) (6), (b) (7)(C) to affirmatively re-submit (b) (6), (b) (7)(C) resignation from the Union.

11. The Union violated the Act by receiving dues and/or fees deducted from Charging Party's wages without a valid authorization.
12. In its rejection letter the Union unlawfully failed to provide Charging Party with the explicit dates upon which it believed (b) (6), (b) was entitled to revoke (b) (6), (b) checkoff.
13. The Union unlawfully maintained a checkoff which does not allow employees to revoke at will after the expiration of the applicable collective bargaining agreement.

Part II

14. The Union and Employer have a current collective bargaining agreement ("CBA") effective July 1, 2017 to June 30, 2020. This CBA contains a provision that requires the Employer to pay Union stewards twenty-five cents per hour above their classified rate of pay.
15. By this provision, the Union maintains and enforces, and continues to maintain and enforce, a CBA that discriminates against non-members by providing a cash benefit to Union stewards, and violates Section 8(b)(2) by causing Employer to encourage membership in a labor organization.
16. The Union maintains and enforces, and continues to maintain and enforce, a CBA that requires Employer to give financial assistance to Union agents, in violation of the Act. The Union has no defense to its actions under Labor Management Relations Act Section 302, 29 U.S.C. § 186.
17. The Union, by and through its agents, receives financial assistance from the Employer, in violation of the Act, and has no defense under LMRA Section 302.

These, and other related acts and omissions, violate the National Labor Relations Act, and threaten, restrain, and discriminate against Charging Party and similarly situated employees in the exercise of their Section 7 right to refrain from collective activity and violate the fiduciary duty of fair representation that the Union owes to all members and non-members alike.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6**

**CHAUFFEURS TEAMSTERS AND HELPERS
LOCAL UNION NO. 175 A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS (1539
COUNTRY CLUB ROAD OPERATIONS LLC
D/B/A TYGART CENTER AT FAIRMOUNT
CAMPUS)**

and

Case 06-CB-245925

(b) (6), (b) (7)(C) **an Individual**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by **(b) (6), (b) (7)(C)** an Individual (“the Charging Party”). It is issued pursuant to Section 10(b) of the National Labor Relations Act (“the Act”), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (“the Board”) and alleges that Chauffeurs Teamsters and Helpers Local Union No. 175 a/w International Brotherhood of Teamsters (“the Respondent”) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Charging Party on August 2, 2019, and a copy was served on Respondent by U.S. mail on August 2, 2019.

(b) The amended charge in this proceeding was filed by the Charging Party on June 4, 2020, and a copy was served on Respondent with this Complaint and Notice of Hearing.

2. (a) At all material times, 1539 Country Club Road Operations LLC d/b/a Tygart Center at Fairmount Campus (“the Employer”), a limited liability corporation with an office

and place of business in Fairmount, West Virginia (“the Employer’s Facility”), has been operating a skilled nursing facility.

(b) Annually, in conducting its operation described above in paragraph 2(a), the Employer derived gross revenues in excess of \$100,000.

(c) During the period of time described above in paragraph 2(b), the Employer purchased and received at the Employer’s Facility goods valued in excess of \$5,000 directly from points outside the State of West Virginia.

3. At all material times, the Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

4. At all material times, the Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act.

(b) (6), (b) (7)(C)

-

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

-

(b) (6), (b) (7)(C)

6. At all material times, the Respondent has been the exclusive collective bargaining representative of the following employees of the Employer (“the Unit”) pursuant to Section 9(a) of the Act:

All employees in the following job classifications: CNA, Kitchen, Laundry, Housekeeping, Nursing Technicians, Hospitality/Personal Care Aides, and all others, excluding supervisory, administrative employees, confidential secretaries, watchmen and guards.

7. (a) At all material times, the Respondent has maintained a form containing an “Application and Notice for Membership” and “Checkoff Authorization and Assignment” (collectively, “Respondent’s Membership Form”), which authorizes the Employer to deduct dues from the employee-signer’s wages and remit those monies to Respondent.

(b) On about May 23, 2018, the Charging Party executed Respondent’s Membership Form described above in paragraph 7(a).

8. The Respondent’s Membership Form, described above in paragraph 7(a) contains language that is confusing and ambiguous and fails to clearly inform signers that they are permitted to revoke dues deduction authorization upon the expiration of a current collective-bargaining agreement with the Employer or during any period in which no collective-bargaining agreement is in effect.

9. (a) About February 4, 2019, the Charging Party, by letter, resigned (b) (6), (b) (7) membership with Respondent and requested to revoke (b) (6), (b) (7) dues deduction authorization.

(b) About February 22, 2019, the Respondent, by letter, rejected the Charging Party’s request to resign at (b) (6), (b) (7) membership with Respondent and revoke (b) (6), (b) (7) dues deduction authorization by asserting that the request was untimely, and requested that (b) (6), (b) (7) resubmit the request at a later date.

10. (a) The letter referred to in paragraph 9(a) requested that, if the request for the revocation of dues checkoff authorization could not be processed at the time of the request, that Respondent provide (b) (6), (b) (7) with the specific dates of the window period during which (b) (6), (b) (7) could revoke (b) (6), (b) (7) dues checkoff authorization.

(b) From about February 22, 2019 to about September 13, 2019, Respondent failed and refused to inform the Charging Party of the dates in which to timely request a revocation of (b) (6), (b) dues check-off authorization.

11. (a) About March 13, 2019, the Charging Party, by letter, noted (b) (6), (b) (7) prior resignation from the Union and renewed (b) (6), (b) request to withdraw (b) (6), (b) dues authorization.

(b) From about March 13, 2019 to about September 13, 2019, Respondent failed to respond to and/or to process the Charging Party's request described above in paragraph 11(a).

12. (a) Since about February 2, 2019 the Employer and Respondent have maintained an agreement which provides:

The Centers will grandfather the current Union Stewards who were serving as a Union Steward as of July 1, 2017 they will receive twenty-five cents (\$0.25) per hour above their classified rate. Once these employees no longer serve as a Union Steward, twenty-five cents (\$0.25) will be deducted from their pay rate.

(b) By engaging in the conduct described above in paragraph 12(a) Respondent has caused and attempted to cause the Employer to discriminate against employees by maintaining and enforcing a contractual provision that discriminates against employees who are not union stewards by denying them the benefit of a pay increase that is given to union stewards.

13. By the conduct described above in paragraphs 7 through 12, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act.

14. By the conduct described above in paragraph 12 the Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(2) of the Act.

15. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before June 23, 2020 or postmarked on or before June 22, 2020** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within

three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on a date and at a time and location to be determined, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: June 9, 2020

/s/ Nancy Wilson

NANCY WILSON
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 06
1000 Liberty Ave Rm 904
Pittsburgh, PA 15222-4111

Attachments